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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/591,897	06/12/2000	Lawrence William Host	FUSION.0002P	3745
27111	7590	10/27/2003	EXAMINER	
BROWN, MARTIN, HALLER & MCCLAIN LLP 1660 UNION STREET SAN DIEGO, CA 92101-2926			JUNG, MIN	
			ART UNIT	PAPER NUMBER
			2663	

DATE MAILED: 10/27/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

TV

Office Action Summary

Application No.

09/591,897

Applicant(s)

HOST, LAWRENCE WILLIAM

Examiner

Min Jung

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 1-23 and 32-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-46 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 6
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8, and 14-23, drawn to transmission of voice over packet network including rerouting based on monitoring results, classified in class 370, subclass 356.
 - II. Claims 9-13, drawn to parameter monitoring system utilizing collection and analysis, classified in class 370, subclass 252.
 - III. Claims 24-31, drawn to scheme for maintaining desirable transmission characteristic by evaluating packets and sending the packets to a different location prior to sending the packets to destination, classified in class 370, subclass 241.
 - IV. Claims 32-41, drawn to analyzing path information before sending data to an acceptable path, classified in class 370, subclass 248.
 - V. Claims 42-46, drawn to Least-cost routing by evaluating cost related with two or more interfaces, classified in class 370, subclass 238.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I, II, III, IV, and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as voice over internet scheme as claimed, without having to use the specific

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parameter monitoring scheme of invention II, the specific transmission characteristic maintaining scheme of invention III, the specific path analysis scheme of invention IV, or the specific least-cost routing scheme of invention V. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Mr. James McClain on October 14 and 15, 2003 a provisional election was made with traverse to prosecute the invention of III, claims 24-31. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-23, and 32-46 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 24-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Beyda et al., US 6,590,869 (Beyda).

Beyda discloses a method and apparatus for selecting whether to place a call over the Internet or the PSTN. Specifically, regarding claims 24 and 29, Beyda teaches a method for maintaining desirable transmission characteristics when sending data packets during a communication session occurring between a first location and a second location on a computer network comprising: transmitting test packets from the first location to the second location (col. 5, lines 55-60); evaluating the test packets to determine the effect on the data packets of transmitting packets from the first location to the second location (col. 5, lines 61-64); and if the evaluating determines the effect on the data packets is undesirable, sending the data packets to a third location prior to sending the data packets to the second location (col. 5, line 65 – col. 6, line 1).

Regarding claims 25 and 30, the first, second, and third location comprising interfaces is inherent in Beyda since interfaces are required for the call processors to communicate through either the PSTN or the Internet.

Regarding claims 26 and 31, Beyda teaches the latency as the undesirable effect on the data packets (col. 5, lines 61-64).

Regarding claim 27, Beyda teaches two different routes that the packets can take on the network (Fig. 1).

Regarding claim 28, Beyda teaches the undesirable effect comprises the quality degradation that inhibits voice communication (Abstract, and col. 5, lines 11-17).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Murphy et al. patent, 6,542,499, the Belzile patent, 6,253,249, the Hrastar et al. patent, 6,301,223, the Riggan et al. patent, 6,490,252, and the Fitzgerald patent, 6,466,548, are cited for further references.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Min Jung whose telephone number is 703-305-4363. The examiner can normally be reached on Monday-Friday, 7AM-3PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 703-308-5340. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4750.

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MJ
October 17, 2003


Min Jung
Primary Examiner